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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/749,318

12/31/2003

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EXAMINER

HOFFMAN, MARY C

ART UNIT

PAPER NUMBER

3733

MAIL DATE

DELIVERY MODE

02/13/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/749,318	Applicant(s) PETERSEN, SCOTT R.	
	Examiner MARY HOFFMAN	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33,35,38-50 and 53-63 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33,35,38-50 and 53-63 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 33, 35, 38, 41-50, 53, 56-63 are rejected under 35 U.S.C. 102(e) as being anticipated by Gilson et al. (PG-PUB 2002/0052626).

Gilson discloses a method (see FIGS. 59-62) of loading a filter into a delivery sheath adapted for use in delivering the filter (40) within the vasculature of a patient, the delivery sheath (7) having a proximal end, a distal end, and a lumen extending through at least a portion of the distal end, the distal end of the delivery sheath having an exterior surface, comprising the steps of: providing a loading tool (13) having a proximal end, a distal end, and a lumen extending therethrough; providing a filter (40) generally longitudinally fixed on a guide wire (71) (i.e. the guide wire is fixed to the filter when being loaded into loading tool), the guide wire having proximal and distal portions, the filter connected to the distal portion; removing the filter, loading tool and delivery sheath from sterile packaging (paragraph 0201) (note Applicant does not claim that the filter AND the guide wire fixed thereto is removed from the sterile packaging); coupling the

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loading tool to the delivery sheath; inserting the proximal end of the guide wire into the lumen of the loading tool and pulling the guide wire (71) (see paragraph 0299], causing the filter to move toward the proximal end of the loading tool and shift from an expanded configuration within the lumen of the loading tool to a collapsed configuration (FIGS. 59-62); and pulling the filter within the lumen of the delivery device (paragraphs 0299-0302). The proximal end of the filter is in the expanded configuration within the lumen of the loading tool (FIG. 60) and thus the filter shifts from an expanded configuration within the lumen of the loading tool to a collapsed configuration (FIG. 61). The loading tool (13) fits over the exterior of the delivery sheath (7). The inside diameter of the loading tool (13) is greater than the inside diameter of the loading tool (13) at a second region. The loading tool comprises a notched region with a third diameter (see transition region near ref. #12). The delivery sheath further comprises an outside and inside diameter, the inside diameter at the third inside diameter region of the loading tool being substantially equal to the outside diameter region of the delivery sheath, and the inside diameter region of the loading tool at the second inside diameter region and the inside diameter region of the delivery sheath being substantially equal. The loading tool is uncoupled from the delivery sheath.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 39, 40, 54, and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilson et al. (PG-PUB 2002/0052626).

Gilson, as modified, discloses the claimed invention except for the size of the inside diameter of the first and second outside diameter regions. It would have been obvious matter of design choice to change the size of the diameters, since such a modification would have involved a mere change in the size of a component. The sizes that are claimed appear to be within the range of known filter delivery devices. A change in size is generally recognized as being within the level of ordinary skill in the art.

Response to Arguments

Applicant's arguments filed 10/22/2008 have been fully considered but they are not persuasive.

First, under the broadest reasonable interpretation, the loading device 7 can be considered a delivery sheath.

Second, Applicant states:

If the Gilson et al. device is arranged as characterized by the Examiner, the filter would be required to move in the direction opposite that disclosed (see Figures 59-60). To follow the claim language, the filter member 40 would need to move from left to right in the structure shown in Figures 59-60, while Gilson et al. clearly show that the filter member moves from right to left.

From this statement, it is unclear which claim limitations are not anticipated by Gibson. Applicant merely states that the prior art does not follow the claim language, but

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does not point to any specific claim language to support this assertion. It is the examiner's position that the prior art reference cited clearly functions in the way claimed under the current interpretation of the reference.

In response to Applicant's argument that the device moves in an opposite direction "as disclosed," those features relied on do not appear to be recited in the claims. Therefore, it is irrelevant whether the reference includes those features or not.

For the foregoing reasons, the rejection is deemed proper.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARY HOFFMAN whose telephone number is

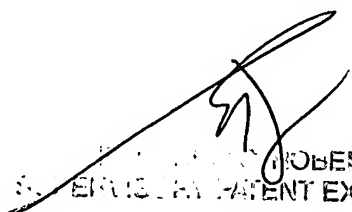
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(571)272-5566. The examiner can normally be reached on Monday-Thursday 10:00-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo C. Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mary C. Hoffman/
Examiner, Art Unit 3733


EDUARDO C. ROBERT
REGISTERED PATENT EXAMINER